Office Supreme Court U.S.
FILED
APR 11 1902
JAMES H. McKENNEY,
Clerk.

No. 599.

Brf. of Greene & Breckenridge for Appellant.

Supreme Court of the United States.

Filed April 11, 1902.

OCTOBER TERM, 1901.

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THE FIRST NATIONAL BANK OF DENVER, COLORADO, THE FIRST NATIONAL BANK OF YORK, NEBRASKA, AND HARRIS AND COMPANY, APPELLANTS,

vs.

JOHN P. KLUG AND CHARLES H. WHEELER, APPELLEES.

BRIEF AND ARGUMENT OF APPELLANTS.

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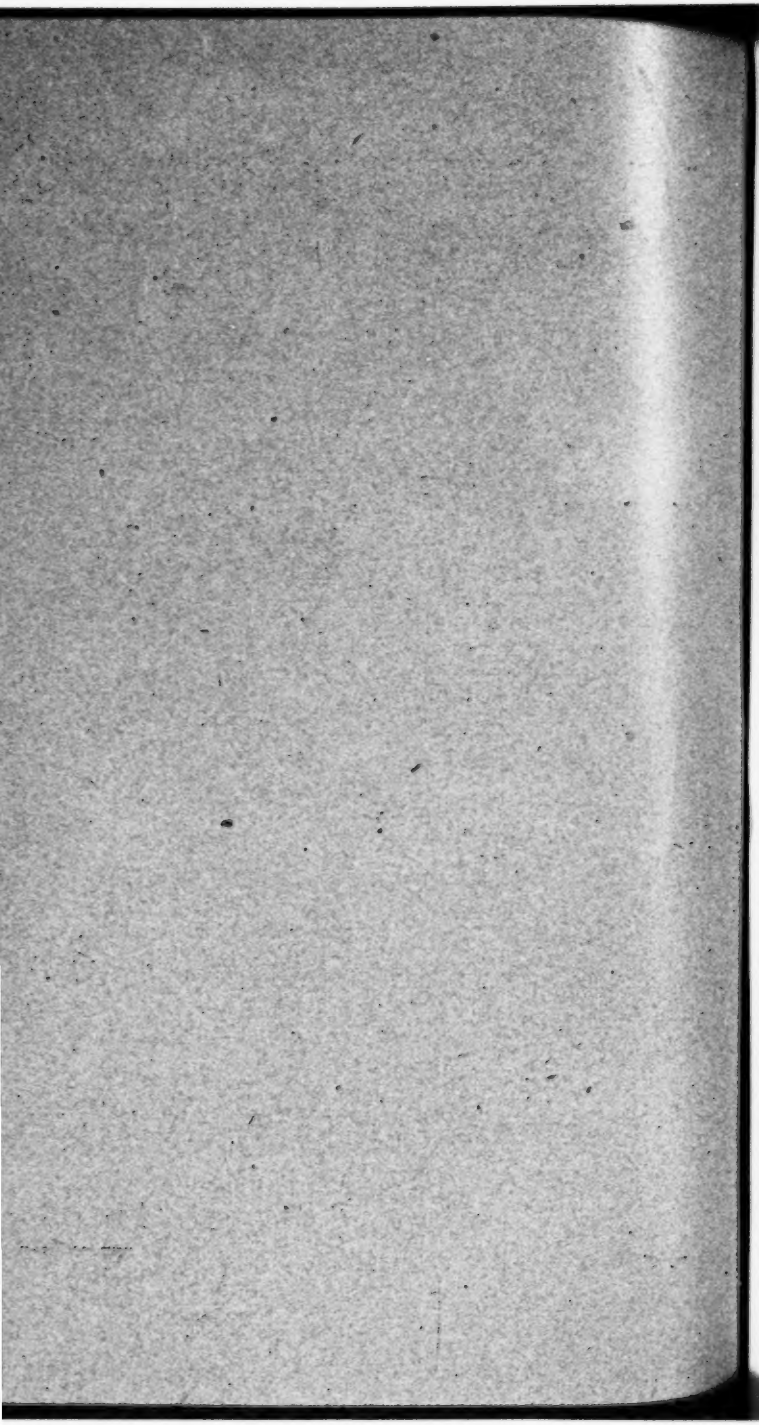

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STATEMENT OF THE CASE.

Appellants, The First National Bank of Denver, Colorado, The First National Bank of York, Nebraska, and Harris & Company, (a corporation), of Denver, Colorado, creditors of John P. Klug of Weld county, state of Colorado, to the amount of fifty-eight thousand, three hundred and ninety-six dollars and thirty-eight cents, ($58,396.38), joined in a petition to the district court of the United States for the district of Colorado, alleging the residence of the parties; that the appellants, who will be hereinafter referred to as petitioners, were creditors of John P. Klug; the amount and nature of their respective claims; the fact of insolvency, and certain acts of bankruptcy that had been committed;

and praying that said John P. Klug be adjudged a bankrupt (1).

Subsequently, by consent of parties and leave of court, the petitioners filed the following amendment (5), to their petition:

"That the said John P. Klug is now, and was at the time of filing the creditors' petition herein, and has been for three and one-half years last past, engaged chiefly in the business of dealing in and buying and selling cattle and horses at or near Evans, Weld county, Colorado, and is not now, and was not at the time of filing the creditors' petition herein, and has not been for three and one-half years last past, a wage-earner nor engaged chiefly in farming or the tilling of the soil."

Thereafter appellee, Klug (who is also hereinafter referred to as respondent), filed his answer to said petition, alleging (6), that he "is now and was at the time of the filing of said petition, and for more than ten years last past has been engaged chiefly in farming and the tillage of the soil." Said answer contained other allegations, denying and putting at issue the allegations of indebtedness in the amounts stated, of insolvency and acts of bankruptcy contained in the petition.

Charles H. Wheeler, a creditor, holding alleged preferences, filed an answer of like import (3) to that of the respondent Klug.

To these answers, petitioners filed replications. (8, 9.)

In due course the cause came on for trial, and the court impanelled a jury to hear the evidence upon and determine the issue raised by the petitioners' allegation *that the respondent Klug was not a person engaged chiefly in farming or the tillage of the soil*, and the respondent Klug's allegation in

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NOTE: References in figures are to pages of the printed record.

his answer that he was so engaged; *and evidence was not permitted to be introduced upon any other issue.*

The petitioners' evidence having been submitted, counsel for respondent Klug moved the court to instruct the jury to find said issue for the respondent. (11, 12.)

Counsel for petitioners then moved the court to instruct the jury as follows:

"That the word 'farming,' as used in the act under consideration (bankrupt act 1898, section 4, b.), is used in its ordinary and popular sense of cultivating or tilling the soil, and that in association with the phrase 'tillage of the soil' the latter serves to explain the use of the word 'farming' and to limit the same in its application so as to mean that 'farming' is the tillage of cultivation of the soil; and that a person chiefly engaged in farming or the tillage of the soil, is one whose principal business is that of cultivating or tilling the soil for the purpose of raising crops."

(See findings of court p. 12.)

The arguments of counsel having been heard in support of the respective motions for instructions to the jury the court denied the motion of counsel for the petitioners, and delivered an oral decision upon the motion of counsel for the respondent Klug as follows:

"In the construction of the provision of the bankruptcy act which is under discussion, I think it is well to recall that the first bankruptcy acts were limited to traders and merchants; that is to say, it was understood in the earlier acts that bankruptcy is applicable only to commercial transactions; and this, in my judgment, requires that when there is an exemption from the terms an act it shall be liberally construed. If an act is general in its terms, as the act of 1898 is, and there are classes of people exempted from its provisions, the construction in respect to those classes is very different from what it would be in criminal law. So when in this act it is said that the business of farming or tilling the soil shall not be within the terms of the act as to in-

voluntary bankruptcy, I think it is impossible to say that these words are of the same meaning. That is to say, that farming is no more than tilling the soil. It is true that is the primary meaning of the word 'farming,' but that meaning grew up in a country where the soil may be tilled anywhere and everywhere; that is to say, in countries which are watered from the clouds and not by irrigation. It was natural that, in a country where there is an abundance of rain that farming shall be understood to mean generally the cultivation of the soil. It may have a different meaning in dry countries where certain kinds of farming may be carried on without cultivating the soil.

I understand the keeping and growing of cattle sheep, horses, hogs, chickens and domestic animals of all kinds has always been a branch of farming, and a branch which is quite distinct from dealing in, buying and selling and vending the same kind of animals. That is true, in a small way, everywhere and in all countries—in Ireland where they keep a few pigs in the dwelling house; in Labrador where they keep chickens around under the sofas and settees—if they have such things—and some dogs outside to carry them over the snow; and in Texas where they have ranches which are fifty or one hundred miles square; it is a business of farming all around through all countries and in all lands to keep domestic animals. Therefore, upon ranches in this country where they may keep cattle and sheep, and graze them even upon the public lands, if they have a fixed habitation and a place where these animals are grown, I understand that to be farming; and I believe it to be farming within the meaning of the bankruptcy act, even if no plow ever turned a furrow, no harrow or other farming implement was ever used. And so in respect to men who buy and sell sheep in this country,—and there are a large number in recent years,—to fat them for market, they are not sheep dealers simply because they buy and sell sheep; they are farmers; they get what provender they can from the lands which they cultivate; they buy more alfalfa from their neighbors, and they feed sheep from fall until spring and sell them in the spring.

I think the respondent here is a farmer within the meaning of this act of congress, even if he bought cattle from time to time, and kept them upon lands which he owned,

and grazed them there; he got some hay from the lands for feeding them and he bought more hay, and perhaps grain for feeding them from others; in other words, the word 'farming' in the bankruptcy act is something more than tilling the soil, in this country at least, and it includes and comprehends all the avocations of husbandry and agriculture; it includes sheep-raising, hog-raising, chicken-raising; it includes fruit raisers, vine growers, and the people who are raising melons down at Rocky Ford—I think they call themselves 'horticulturists,' or something of that kind. If they live by and from the soil, taking the products of the soil and availing themselves of them, whether those products grow in the course of nature or by cultivation, it is still farming, in my judgment. In that view, I think the jury may, upon this testimony, find that the respondent is a farmer within the meaning of this act."

And thereupon the court instructed the jury to return a verdict that the respondent Klug was a farmer, or "engaged chiefly in farming" within the meaning of the bankrupt act; and such verdict having been returned by the jury, the court dismissed the petition herein for want of jurisdiction. (11.)

Thereafter, the court, in accordance with order XXXVI of the General Orders in Bankruptcy, made its findings of fact and conclusions of law, and entered the same *nunc pro tunc*, as of the date of the dismissal of the said petition. (12.)

The court found from the evidence (pp. 12 to 14), that the respondent Klug, at the time of filing the petition, owned 2,000 acres in contiguous tracts, part of which had been acquired under the United States homestead and pre-emption laws (findings 1 and 2); that he was the lessee of a range of 18,000 acres (finding 4); that the tract of 2,000 acres was improved with a dwelling house, barn, sheds and corrals, wells and fencing (finding 3); that he owned one plow, mower, several hay rakes, and other implements for cutting and stacking hay, and several wagons (finding 13); that the

tract of 2,000 acres was mostly grazing land, from 400 to 700 acres standing in wild hay (finding 7; that there were no water rights in connection with said tract (finding 8); that he had attempted to cultivate a tract of 10 or 15 acres of said land, with little *success (finding 12)*; that upon said 2,000 acres the respondent kept horses varying in number from 400 to 700 head (finding 14); that he had, in addition thereto, a herd of cattle, averaging 2,000 head (finding 15); that the wild hay gathered from the tracts mentioned averaged from 200 to 400 tons per year (finding 10); that in addition to the grazing facilities and the wild hay, respondent purchased large quantities of feed for his cattle and horses (finding 16); that in 1900 respondent purchased a tract of land, eighty acres of which were under cultivation, principally in alfalfa, this land being sold in the spring of 1901 (finding 5); that in the year 1900 respondent leased 35 or 40 acres of land in alfalfa (finding 6); that the addition of the crops from these last mentioned tracts to the wild hay crop of 1900, did not make sufficient feed for the cattle and horses (finding 16); that respondent held himself out to the world, by means of advertisements on letterheads and stationery used in his correspondence, to be a dealer in, as well as a breeder of cattle and horses (finding 18); that during the three years immediately prior to the institution of these proceedings, the respondent bought and sold from 1,000 to 1,200 head of cattle, not included in the horses and cattle grazed by him aforesaid (finding 17); that the respondent was chiefly engaged in the buying, selling, breeding and raising of horses and cattle, and was not chiefly engaged in the tillage or the cultivation of the soil, and that the horses and cattle kept and fed by him were not sustained chiefly by the wild and cultivated hay crops produced from the tracts of land above mentioned, but were grazed upon the tracts of

land and the leased and public ranges mentioned, and fed with the wild and cultivated hay crops mentioned, and with hay and grain purchased from others, in quantity and value in excess of the crops of hay produced from said tracts of land (findings 19 and 20.)

The conclusions of law stated by the court appear in the record (14) and are also set forth in the following

ASSIGNMENTS OF ERROR.

First: The court erred in its first conclusion of law, in holding "that the keeping and growing of cattle, sheep, horses, hogs chickens and domestic animals of all kinds, has always been a branch of farming, and a branch which is quite distinct from dealing in, buying and selling and vending the same kind of animals, as in Texas, where they have ranches which are fifty or one hundred miles square; it is a business of farming in all countries and all lands to keep domestic animals. Therefore, upon ranches in this country, where they may keep cattle and sheep, and graze them, even upon the public lands, if they have a fixed a habitation, and a place where those animals are grown, that would be farming within the meaning of the bankruptcy act, even if no plow ever turned a furrow, no harrow or other farming implement were ever used."

Second: The court erred in its second conclusion of law in holding "that the word 'farming' in the bankruptcy act of 1898, is something more than tilling the soil, and includes and comprehends all the avocations of husbandry and agriculture; it includes cattle-raising, sheep-raising, hog-raising, chicken-raising; it includes fruit growers, vine growers and people who raise melons. If they live by and from the soil, taking the products of the soil and availing themselves of them, whether those products grow in the course of nature, or by cultivation, it is still farming."

Third: The court erred in its third conclusion of law in holding "that the word 'farming,' and the phrase 'the tillage of the soil,' connected by the disjunctive particle 'or,' in the association in which they occur in the bankrupt act of 1898, are not synonymous—they do not have the same meaning, nor does the phrase

'the tillage of the soil' in such association, serve to limit the meaning of the word 'farming,' so as to mean farming by the tillage of the soil."

Fourth: The court erred in its fourth couclusion of law in holding "that in view of the conclusions above expressed, the respondent is a farmer and 'engaged chiefly in farming' within the meaning of section 4b of the bankrupt act of 1898, and that he is not subject to be adjudged an involuntary bankrupt; and this court, therefore, has no jurisdiction in the premises to proceed to the trial of the issues of insolvency and bankruptcy raised by the petition and answer herein."

Fifth: The court erred in its conclusions of law as applied to the facts found, that the respondent is not subject to be adjudged an involuntary bankrupt.

Sixth: The court erred in holding that it had no jurisdiction in said proceeding to try the issues of insolvency and bankruptcy raised by the petition and answer therein.

Seventh: The court erred in refusing to instruct the jury in accordance with the request of petitioners' counsel, "that the word 'farming,' as used in the act under consideration, is used in its ordinary and popular sense of cultivating or tilling the soil, and that in association with the phrase 'tillage of the soil,' the latter serves to explain the use of the word 'farming' and to limit the same in its application so as to mean that 'farming' is the tillage or cultivation of the soil; and that a person chiefly engaged in farming or the tillage of the soil is one whose principal business is that of cultivating or tilling the soil for the purpose of raising crops."

Eighth: The court erred in instructing the jury to find that the respondent is a farmer, and "engaged chiefly in farming" within the meaning of the bankruptcy act of 1898.

Ninth: The court erred in dismissing petitioners' petition herein to have the said John P. Klug adjudged an involuntary bankrupt.

Tenth: The court committed manifest errors in divers other particulars, as appears upon the record in said proceedings, to the detriment and injury of said petitioners therein. (16.)

ARGUMENT.

The ten assignments of error, taken together, present the single question whether, under the facts of the case, and in the contemplation of the bankrupt act of 1898, the respondent Klug is within the exempted classes of section 4b, of the act, as a person engaged chiefly in farming, or is without the exemption, and liable to be adjudged an involuntary bankrupt. A division of the argument to cover the subject matter of each assignment of error separately is not practicable or desirable, and any effort to so divide and consider the subject would result in much useless repetition. The sixth and ninth assignments of error state in brief terms the ultimate errors of the district court of which appellants complain. A consideration of these assignments will involve a discussion of the errors covered by all other assignments.

Under our view, the respondent Klug's business is not of such a nature that it presents the same reasons for legislative exemption that the vocation "farming" presents; nor is his business one which is designated by the word "farming" as the same is used in its ordinary and popular meaning; and especially is it not designated by the word "farming" as limited by the words "or the tillage of the soil."

POINT I.

The Appellee Klug's Business is not One of Such a Nature that it Presents the Same Reasons for Legislative Exemption that the Vocation of a Farmer Presents.

The legislative reason for the exemption of classes from the operation of the act is plain. The exemption recognizes that there are people whose livelihood is gained by continuous and exacting manual labor, with a minimum of pecuniary gain; who gain nothing or little through the

lucky turns of trade; whose reward is in direct proportion to their physical labor; for whose prosperity continued employment is essential.

It is to the interest of the nation that such may be constantly employed, either as laborers in the mills, on the railroads, or on the farm; if they chance to be tilling the soil, that the crops may be tended, and that they may have the fullest measure of prosperity, and the fullest reward for their labor, and the most liberal opportunity to borrow and repay that which is necessary to supply their needs between harvest periods. Upon the prosperity of such, the prosperity of the nation is rested; and hence it is the policy of the congress of the United States in this and other enactments, and of the legislatures of the various states, to foster and protect such in their pursuits, and save them from annoyance by importunate creditors. The public would suffer, if in their moments of financial weakness such persons could be dragged from their employment to the bankruptcy court.

The business in which appellee Klug was engaged is of a different class. The stock business, *i. e.*, the grazing, raising and trading in cattle, horses and the like, involves primarily the investment of capital not labor; the profits are more the results of natural multiplication and natural conditions, and are *great* in proportion to the labor expended; more analogous in its demands upon the proprietor to mercantile than agricultural pursuits. It is a *business* demanding comparatively mental more than manual effort, and business talents more than constant physical strength. The stock are turned loose to graze, multiply and grow. One man may watch hundreds, keeping them where water and feed are plentiful, and protecting them from depredations. As a class, the stock-grower operates on a larger, more independent basis than a wage-earner or a tiller of

the soil, and neither does he need (as distinguished from the merchant or trader), nor is he entitled, to the protection that is accorded to the wage-earner or farmer. The stock-grower belongs to a class strong enough to stand without special privileges. Since the owner is seldom with the herds, they will not suffer from his non-attendance.

Therefore the public welfare does not demand that the class known as stock-grazers, growers and traders be exempted from the burdens of the bankruptcy act, and unless such a business can fairly be brought within the usual and ordinary meaning of the words "farming or tillage of the soil," their meaning ought not to be perverted to include the class of business in which the appellee Klug is engaged.

The two classes, farmers and stockmen, may merge one in the other, but there is a very great difference between the characteristic types of the two classes, and the appellee Klug is a fair type of the stockman,

While the court below admits that the primary meaning of the word "farming" is to till the soil, he considers it to have been expanded in said countries to include stock growing. We submit that the meaning of the word has not been changed, nor does the word in the western states, as it is popularly used and accepted, include the stockman.

As used in the legislation of Colorado and Washington, the words are used to designate different classes.

See an act of the territorial legislature of Colorado, entitled "An Act to create a lien in favor of ranchmen and *Others*."

"BE IT ENACTED by the Council and House of Representatives of Colorado Territory:

Section 1.—That any ranchman, *farmer*, agistor or herder of cattle, tavern keeper or livery-stable keeper, to whom any horse, mules, asses, cattle or sheep shall

be entrusted for the purpose of feeding, herding, pasturing or ranching, shall have a lien, etc."

General Laws of Colorado, 1861, pp. 349, 350.

See *General Statutes of Washington*, § 1705, which provides:

"That any *farmer*, ranchman, herder of cattle, etc., to whom any cattle or sheep shall be entrusted for the purpose of feeding, herding, pasturing, caring for or ranching shall have a lien thereon," etc.

See an Act of the territorial legislature of Colorado, entitled "An Act for the Protection of Farmers against the depredations of stock in the counties of Douglas and Weld."

"BE IT ENACTED, etc:

"Section 1. That no person *farming or cultivating land* within the limits of Douglas or Weld counties shall be required to fence or enclose the same against any stock running at large or herded within said counties. All persons owning or having charge of stock, whether cattle, horses, mules, asses, sheep or hogs, shall be required to herd or confine the same in secure enclosures during the season for growing crops, from the time of planting until said crops are gathered," etc.

Session Laws of Colorado, 1864, p. 216, 217.

Article 16, § 6 of the constitution of Colorado provides:

"Section 6. The right to divert unappropriated waters of any natural stream to beneficial uses shall never be denied. Priority of appropriation shall give the better right as between those using the water for the same purpose; but when the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for *domestic purposes* shall have the preference over those claiming for any other purpose, and those using the water for *agricultural purposes* shall have preference over those using the same for manufacturing purposes."

General Statutes of Colorado, 1883, p. 71.

Construing this section of the constitution of Colorado,

the supreme court of Colorado has held that the right to take water for the appropriator, "his family or his *stock*," is to be classed as a domestic, *not an agricultural use.*

Broadmoor Dairy Company v. Brookside W. & S. Co., 24 Colo. at 546.

The word "farming" means in Colorado what it means in Massachusetts, or Louisiana, *i. e.*, the cultivation of the soil. It would be pernicious to so construe the bankrupt act that the word would have one meaning in New York and another in Montana.

POINT II.

The Appellee Klug's Business Is Not Comprehended by the Word "Farming" as Ordinarily and Popularly Understood.

It is a general and primary rule of interpretation, where there is nothing in the statute to indicate that a word is used in a peculiar or technical sense, that it is to be taken in its *ordinary and popular meaning.*

Maillard v. Lawrence, 16 How., 251-262, at 261;
Greenleaf v. Goodrich, 101 U. S., 284.

We submit that the "ordinary and popular meaning" of the word "farming" is the tillage or cultivation of the soil, and the gathering of the crops. That commonly the purpose of "farming" is to cultivate the soil, and raise and gather the crops for consumption or profit.

There are two cases in which the courts (district courts of the United States) have been called upon to construe and interpret the phraseology of §4b of the bankrupt act of 1898, in determining what constitutes "farming" within the meaning of the act. These cases proceed upon the theory that each case must be decided upon its own circum-

stances, and that it is impracticable to define with precision the facts which will in all cases determine whether one is "engaged chiefly in farming."

In Re Mackey, 110 Fed., 355;
In Re Thompson, 102 Fed., 287.

Resort, therefore, is had to the lexicographers to ascertain the ordinary, generally accepted and primary meaning of the word "farming," and from an examination of the facts of the case at bar, determine whether the appellee Klug was engaged in such occupation or business as the word "farming," giving its ordinary and popular meaning, would embrace. There is no pretense on the part of the appellee to show that the appellee Klug was "engaged chiefly in * * * the tillage of the soil."

Definitions of the Words "Farm," "Farmers" and "Farming," Etc.

"Farmer," "(1) one who *cultivates* hired ground."

"(2) one who *cultivates* ground whether his own or another's.

Johnson's Dictionary.

"Farmer," "(a) one who *cultivates* a farm, a *cultivator* of the fields, an agriculturist, a husbandman."

Imperial Dictionary.

"Farmer," "one who *cultivates*."

Stormouth's Dictionary.

"Farmer," "(2) one who farms or *cultivates* ground; an agriculturist, a husbandman."

Encyclopædic Dictionary.

"Farm," v. "To *till the soil*; to labor as an agriculturist.

"Farmer," n. "(a) one who hires and *cultivates* a farm;

a *cultivator* of leased ground; (c) one who is devoted to the *tillage of the soil;* an agriculturist, a husbandman."

"Farming," n. "The business of *cultivating land.*"

Webster's Dictionary, edition of 1887.

"Farmer," "One who *cultivates* a farm, either as owner or lessee, in *general* one who *tills the soil.*"

"Farming." "The business of *cultivating land* or employing it for the purposes of husbandry; agriculture, husbandry."

"Agriculture" (tilling of land). "The *cultivation* of the ground; especially *cultivation* with the plow and in large areas in order to raise food for man and beast; husbandry, tillage, farming."

Century Dictionary.

"Farmer"—"Farming." "The economy or management of plants; agriculture, *cultivation*," etc.

Roget's Thesaurus of Eng. Words (Sears).

"Farmer." "In *common parlance*, and as a description in a deed, farmer means one who *cultivates* a farm, whether he owns it or not."

Bouvier's Law Dictionary, Rawle's Rev., vol. 1, p. 761.

"Farm." "In *American Law* 'Farm' as a noun, means a tract of land devoted to purposes of agriculture, cattle raising, etc., and as a *verb* its meaning is to *till* or *cultivate lands* as a business."

Rapalje and Lawrence's Law Dictionary, vol. 1, p. 502.

"Farmer" "2. A husbandman or agriculturist, one who *cultivates* a farm, whether the land be his own or another's."

Black's Law Dictionary, p. 478.

"Agriculture." "In its more *common* and *appropriate sense* (i. e.) that species of *cultivation* which is intended to

raise grain and other field crops for man and beast, husbandry, as defined by Webster."

Anderson's Law Dictionary, 45.

"Person actually engaged in the science of agriculture (within meaning of statute of exemption) is one who derives the support of himself and his family, in whole or in part, from the tillage and cultivation of fields."

Black's Law Dictionary, pp. 55 and 56.

"Agriculture." "The *cultivation of soil* for food products or any other useful or valuable growths of the field or garden, tillage, husbandry; also by *extension*, farming, including any industry practiced by *a cultivation of the soil in connection with such cultivation*, as breeding and rearing of stock, dairying, etc.; the science that treats of the cultivation of the soil."

Bouvier's Law Dictionary, Rawle's Rev., vol. 1, p. 124.

Some who are engaged in the raising of crops for profit, find that some part of their crops is more profitable when used to feed and fatten domestic animals for sale. In such a case it might not be unreasonable to say that the raising and feeding of such animals is appendant, auxiliary or incident to the tillage of the soil.

State v. Kennedy, 98 N. C. 657;

In re Thompson, 102 Fed. 287.

It has likewise been held in a case in which a butcher fattened and fed lambs on a farm for slaughter and sale by him in the course of his business, that the feeding and fattening of lambs was not a part of his farming, but a part of his butcher business.

Trustees v. Pettinger, 17 Wend. 265.

As defined by the authorities, the word "farming" is synonymous with "agriculture."

"A person is actually engaged in the science of agriculture when he derives the support of himself and family, in whole or in part, from the *tillage and cultivation of fields.*"

Springer v. Lewis, 22 Pa. St., at 193.

In the case at bar, the findings of fact show that at the time of filing the creditors' petition no part of the feed of the cattle and horses being grazed and kept by the appellee Klug, was the product of tillage or cultivation. The stock grazed upon the natural grass on the range, and in feeding time, were fed in part by the crop of wild hay gathered by Klug, and with greater quantities of hay and grain purchased for the purpose. The main industry was the raising, feeding, grazing and dealing in cattle and horses; and the small quantity of wild hay gathered by Klug or his servants, was but an incident of the business of stock growing.

In the year 1900, Klug did cause some 120 acres of land to be cultivated, and the alfalfa grown thereon to be fed to the cattle and horses, but the products of such cultivation added to the wild hay was not sufficient to supply the needs of the cattle and horses kept by him. Even in the year 1900, the cultivating done by Klug, and his servants, was but an incident of the business of a stockman, which was his primary occupation.

By the language of the bankrupt act of 1898, congress extends protection from the compulsory features of the law with respect to involuntary proceedings, to those persons whose "chief" or principal business or occupation is "farming or the tillage of the soil." The findings of fact in the case at bar show the "chief" or principal business or occupation of Klug, to have been the raising, grazing, breeding, buying and selling and dealing in cattle and horses, or stock. In the very few decisions in which the word "farming," or some of its accepted synonyms have been defined, the general results of the decisions appears to be that the raising of cattle can not be described as "farming" when it is the chief or principal use to which the land is devoted, although it might be included in the term

"farming" when it is merely a subordinate or incidental part of the farmer's business, the chief or principal feature being the raising of crops by planting and cultivation of the ground. In order that Klug may be brought within the exemption, it becomes necessary not only to disregard the universal meaning given the term "farming," *i. e.* the tillage and cultivation of the soil, but to go further than the most liberal meaning which the lexicographers and authorities give the word, *i. e.* that cattle raising may be a branch of farming when incident or appertinent to the cultivation of the soil, and hold that a raiser and grazer of stock, a stock grower or stockman, who makes such occupation his principal and chief and not secondary and incidental business, is a person engaged in "farming." The words or terms representing the business of farming and stock growing have a well defined and different meaning familiar to all persons, and represent distinct occupations, and indeed, antagonistic interests, as the legislation of some states framed to protect the one from the other, clearly indicate. The distortion necessary to fit the term "farming" on a stockman or cattle grower is wholly unwarranted by anything contained in the bankrupt act itself, and was certainly not contemplated by congress.

POINT III.

The Appellee Klug's Business is not Within the Purview of the Word "Farming" as used in the Act, Because the Words "Tillage of the Soil" are to be Understood as a Definition or Explanation of What is Meant by "Farming," and They Operate to Limit the Same in its Application, so as to Mean that "Farming" is the Tillage or Cultivation of the Soil.

We revert to the rule of law heretofore quoted, and

submit that the word "or" between the words "farming" and "the tillage of the soil," should be interpreted in its usual "ordinary and popular" sense.

The word "or" used between synonymous terms has the meaning "to-wit," and thus interpreted it makes the latter of the terms joined thereby a limiting word or phrase to the former.

"The opposition suggested by the'disjunctive particle or' is sometimes merely nominal or verbal; as 'that object is a triangle or figure contained under three right lines'—Harris. 'So if we say, that figure is a sphere, or a globe or a ball. Id.' Hermes, p. 258. In these cases the disjunctive consists in nothing but an alternative of words; for the terms connected describe or name the same thing."

Brown's Grammar of English Grammars, p. 432.

"The members (the words or terms connected by the particle "or") may then be opposed to each other not as to the notion, but only as to the form; in this manner one serves to explain the other."

Metzner's English Grammar, vol. 3, p. 351.

This rule of grammar has received judicial recognition and application in the interpretation of statutes.

Arthur v. Cuming et al., 91 U. S., 362;
Wells v. S. Minn. Ry. Co., 1 Fed. 270, at 272;
Commonwealth v. Grey, 2 Gray 501;
Clifford v. State, 29 Wis. 327.

The phrase "tillage of the soil" is synonymous with the word "farming."

"Synonyms are words that have not the *same* but *similar* meanings."

English Lessons for English People, Rev. G. F. W. Mortimer, B. D., pub. 1886, London.

"Farmer," "signifies one managing a farm, or *cultivating* the ground for a subsistence."

Crabbe's English Synonyms.

"Farmer," n. "1. Agriculturist, husbandman, *cultivator of the* soil."

"Farm." v. n. "*Till the soil.*"

Soule's English Synonyms.

If the word "farming," used in the act under consideration, is given its "ordinary and popular meaning," it will be clearly seen by the foregoing definitions and authorities cited, that it is synonymous with the expression "the tillage of the soil," with which it is there associated; and being synonymous therewith, the disjunctive particle "or," as used, is used in the sense of "to-wit," and the term and expression "the tillage of the soil" serves to explain the word "farming" as used in the act.

We consider it a significant fact, that while §1 of the bankrupt act of 1898 defines "wage-earner," and other words used in the act, it does not attempt to define the word "farming," presumably because the meaning which is intended by congress to be given this word is made sufficiently clear by the use of the synonymous phrase "tillage of the soil," and is intended to be taken in connection with the word "farming" in a qualifying and explanatory sense.

The only authority relied upon by the appellees in the court below, in support of their contention that the appellee Klug was within the excepted classes of §4b of the bankrupt act, and could not be adjudged an involuntary bankrupt, was the case of *In re Thompson*, 102 Fed., 287, decided by the U. S. district court for the northern district of Iowa, June 18, 1900.

The case referred to presents an entirely different state of facts from the case at bar. In the *Thompson* case the parties *stipulated* that the respondent "*was not a cattle-*

raiser." The findings of fact in the case at bar show the appellee Klug to be engaged in the business of raising cattle and also to be in the business of dealing in cattle. The facts in the *Thompson* case show that the respondent in that case was quite extensively engaged in cultivating or tilling the soil. The facts in the case at bar, as appears from the findings of fact, show that the appellee Klug was irregularly, and intermittently and only to the most limited and insignificant extent engaged in cultivating the soil.

While the appellants contend that the interpretation of the bankrupt act of 1898, as laid down by the court in the *Thompson* case, with respect to the conclusions of the court on the questions of construction of the phraseology of section 4, b., is erroneous, and that the court did not apply the proper test to ascertain the meaning of the expression "engaged chiefly in farming or the tillage of the soil," but on the contrary speculated as to how congress might or would have framed and worded the section referred to, had it been the intention to give the phrase the meaning contended for *i. e.* that a person "engaged chiefly in farming" was a person "engaged chiefly in the tillage of the soil;" nevertheless, the facts supporting the decision of the *Thompson* case make the decision in this respect inapplicable to the case at bar, for the facts of the *Thompson* case clearly show the respondent to have been "engaged chiefly in farming" by "the tillage of the soil," his operations in cattle being merely incidental to his business of cultivating the land; and with respect to the case at bar, the findings of fact, on the contrary, show the appellee Klug to have been engaged chiefly in the occupation or business of raising, grazing, buying and selling and dealing in cattle and horses, and any cultivation of the soil done by him being merely incidental and secondary to his cattle business. The ques-

tion to be decided in the case at bar is, whether raising, grazing, buying and selling and dealing in cattle is the business or occupation of "farming" within the contemplation of the bankrupt act of 1898, as it was held to be by the district court. This question was not passed upon in the *Thompson* case, but was eliminated from consideration by the *stipulation of the parties* that the respondent was "not a cattle raiser."

In conclusion we submit that the district court erred in holding that the appellee Klug was within the exceptions enumerated in section 4b of the bankrupt act of 1898, and that it had no jurisdiction to hear and determine the other issues raised by the pleadings, and in dismissing the petition; and, therefore, that its order and judgment should be reversed.

Respectfully submitted,

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April 5, 1902.